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10/646,164	08/22/2003	Steven W. Widner	P1957US00	9109

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Gateway Inc
Patent Attorney
PO Box 2000
N. Sioux City, SD 57049

EXAMINER	
PUENTE, EMERSON C	
ART UNIT	PAPER NUMBER
2113	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/646,164	WIDNER, STEVEN W.	
	Examiner	Art Unit	
	Emerson C. Puente	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-14,16-24,26-35,37-45 and 47-61* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-14,16-24,26-35, 37-45, and 47-61* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 August 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *20070802*.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is made **Non-Final.**

Claims 1-3,5-14,16-24,26-35, 37-45, and 47-61 have been examined. Claims 4,15,25,36, and 46 have been cancelled

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 53-55 and 61 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 53-55 and 61, the claimed means lacks hardware to enable the functionality. As the claims lack hardware, they are not directed to physical "things". They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed software does not define any structural and functional interrelationships between the software and other claimed elements of a computer that permit the software functionality to be realized.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,7-14,18-24,28-33,35,39-43,45, and 49-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application No. 2003/0208593 of Bharati et al. referred hereinafter "Bharati" in view of US Patent No. 5,857,192 of Fitting.

In regard to claim 1, Bharati discloses a method for providing build of material information in a computer system, comprising:

identifying build of material information in a source file of the computer system. Bharati discloses obtaining an inventory of system properties, such as name of operating system, OS version, etc. (see page 2 paragraph 19).

encoding a file marker with the build of material information from the source file. Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20).

storing the file marker in a physical storage location. Bharati discloses storing the information in a database (see page 2 paragraph 20).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with no contents, wherein information is formatted in the name of the file, indicating wherein the build of material information is encoded in a file name of the file marker. A person of ordinary

skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regards to claim 11, Bharati discloses a method for providing build of material information in a computer system, comprising:

receiving a source file into the computer system. Bharati discloses collecting information form the client computer for transmission to the server computer (see page 2 paragraph 19).

identifying build of material information in the source file. Bharati discloses obtaining an inventory of system properties, such as name of operating system, OS version, etc. (see page 2 paragraph 19).

encoding a file marker with the build of material information from the source file. Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20).

storing the file marker in a physical storage location. Bharati discloses storing the information is a database (see page 2 paragraph 20).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with

no contents, wherein information is formatted in the name of the file, indicating wherein the build of material information is encoded in a file name of the file marker. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regard to claim 22, Bharati discloses a method of providing build of material information during a software failure, comprising:

encoding a file marker with build of material information from a source file. Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20).

sending the file marker to a central authority when an application abnormally terminates. Bharati discloses information is collected from the client computer for transmission to a server, indicating a central authority, following the occurrence of a reporting event, such as occurrence of an application error (see page 2 paragraph 19).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with no contents, wherein information is formatted in the name of the file, indicating wherein the

build of material information is encoded in a file name of the file marker. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regard to claim 32, Bharati discloses a signal tangibly embodied a computer readable medium for providing build of material information, comprising:

a first command for identifying build of material information in a source file. Bharati discloses obtaining an inventory of system properties, such as name of operating system, OS version, etc. (see page 2 paragraph 19).

a second command for encoding a file marker with the build of material information from the source file. Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20).

a third command for storing the file marker in a physical storage location. Bharati discloses storing the information is a database (see page 2 paragraph 20).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with

no contents, wherein information is formatted in the name of the file, indicating wherein the build of material information is encoded in a file name of the file marker. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regard to claim 43, Bharati discloses a computer system for providing build of material information during a software failure, comprising:

a processor (see figure 1 item 120 and page 2 paragraph 25).

a memory coupled with the processor (see figure 1 item 130 and page 2 paragraph 25).

a signal, executable by the processor, wherein the signal further comprises, a means for generating a file marker and encoding the file marker with build of material information from a source file. Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20)

a communication assembly coupled with the processor, the communication assembly for sending the file marker to a central authority when an application abnormally terminates. Bharati discloses information is collected from the client computer for transmission to a server, indicating a central authority, following the occurrence of a reporting event, such as occurrence of an application error (see page 2 paragraph 19).

wherein the central authority may use the file markers in failure analysis, system restoration, and for future use in identifying and diagnosing technical support issues. Bharati discloses the information is used to determine the precise application and its environment and to

determine whether a potential solution exist, wherein if a solution exist, providing a download to a solution and if not, storing in a database for further reference and diagnostic purposes (see page 2 paragraph 20).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with no contents, wherein information is formatted in the name of the file, indicating wherein the build of material information is encoded in a file name of the file marker. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regard to claim 53, Bharati discloses a means for providing build of material information during a software failure, comprising:

means for encoding a file marker with build of material information from a source file Bharati discloses formatting the inventory in a desired way (see page 2 paragraph 20).

means for sending the file marker when an application abnormally terminates. Bharati discloses information is collected from the client computer for transmission to a server,

indicating a central authority, following the occurrence of a reporting event, such as occurrence of an application error (see page 2 paragraph 19).

However, Bharati fails to explicitly disclose:

wherein the build of material information is encoded in a file name of the file marker.

Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati and Fitting to transmit information as a file with no contents, wherein information is formatted in the name of the file, indicating wherein the build of material information is encoded in a file name of the file marker. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with transmitting formatted data (see page 2 paragraph 20), and transmitting information as a file with no contents, wherein information is formatted in the name of the file, as per teachings of Fitting, constitutes a known and suitable format for transmitting data that avoids additional loading and lengthy delays (see column 3 lines 60-62).

In regard to claims 2,13, and 55, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses sending the file marker to a central authority when an application abnormally terminates. Bharati discloses information is collected from the client computer for transmission to a server, indicating a central authority, following the occurrence of a reporting event, such as occurrence of an application error (see page 2 paragraph 19).

In regard to claims 3,14,24,35, 45, and 54, Bharati in view of Fitting discloses the claim limitations as discussed above. Fitting further discloses wherein the file marker comprises a null file. Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

In regard to claims 7,18,28,39,and 49, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses wherein the file marker is provided within a physical storage medium. Bharati discloses storing the information in a database (see page 2 paragraph 20).

In regard to claims 8,19,29,40, and 50, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses wherein the physical storage medium comprises a disk drive. Bharati discloses wherein the database may reside on media such as a CD-ROM accessible using a CD-ROM drive.(see page 6 paragraph 79).

In regard to claim 9,20,30,41, and 51, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses wherein the build of material information is selected from the group consisting of device drivers, software applications, operating systems, and BIOS versions. Bharati discloses obtaining an inventory of system properties, such as name of operating system, OS version, etc. (see page 2 paragraph 19).

In regard to claim 10,21,31,42, and 52, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses wherein the central authority is selected from the group consisting of a server, a managing computer, a network administrator, a technical assistance center, and an automated calling center. Bharati discloses information is collected from the client computer for transmission to a server (see page 2 paragraph 19).

In regard to claim 12, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses wherein the receiving of the file is by a download from a computer readable medium. Bharati discloses installing application and upgrading operating systems onto a computer (see page 1 paragraph 7 and 8).

In regard to claim 23, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses comprising the step of storing the file marker in a physical storage location. Bharati discloses storing the information is a database (see page 2 paragraph 20).

In regard to claim 33, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharati further discloses a fourth command for sending the file marker to a central authority during a software application failure. Bharati discloses information is collected from the client computer for transmission to a server, indicating a central authority, following the occurrence of a reporting event, such as occurrence of an application error (see page 2 paragraph 19).

In regard to claim claims 56-61, Bharati in view of Fitting discloses the claim limitations as discussed above. Fitting further discloses wherein the file name contains predefined fields of characters configured to communicate the build of material information without requiring opening the file marker. Fitting discloses transmitting information as a file with no contents, wherein information is formatted in the name of the file (see column 4 lines 20-25 and column 5 lines 5-10).

Claims 5,16,26,34,37,44 and 47 are rejected under 35 U.S.C. **103(a)** as being unpatentable over Bharati in view of Fitting and in further view of US Patent No. 6,920,492 of Richard.

In regard to claim 5,16,26,37, and 47, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharat further discloses populating the file marker with inventory of system properties, such as name of operating system, OS version, manufacturer, etc. (see page 2 paragraph 19).

However, Bharati in view of Fitting fails to explicitly disclose:

wherein the file name is populated with information from a SMBIOS table.

Richard discloses wherein SMBIOS are known to comprise of system information such as manufacturer, version, serial number, as well as reference to the operating system (see page 9 lines 25-36).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati, Fitting, and Richard wherein the retrieval of system properties is done via the SMBIOS, indicating wherein the file name is populated with information from a SMBIOS table. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with populating the file marker with inventory of system properties, such as name of operating system, OS version, manufacturer, etc. (see page 2 paragraph 19), and the SMBIOS, as per teachings of Richard, constitute a suitable known location comprising of such system information (see page 9 lines 25-36).

In regard to claim 34 and 44, Bharati in view of Fitting discloses the claim limitations as discussed above. Bharat further discloses populating the file marker with inventory of system properties, such as name of operating system, OS version, manufacturer, etc. (see page 2 paragraph 19).

However, Bharati in view of Fitting fails to explicitly disclose:

wherein the build of material information is read from a SMBIOS interface.

Richard discloses wherein SMBIOS are known to comprise of system information such as manufacturer, version, serial number, as well as reference to the operating system (see page 9 lines 25-36).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati, Fitting, and Richard wherein the retrieval of system properties is done via the SMBIOS, indicating wherein the build of material information is read from a SMBIOS interface. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati is concerned with populating the file marker with inventory of system properties, such as name of operating system, OS version, manufacturer, etc. (see page 2 paragraph 19), and the SMBIOS, as per teachings of Richard, constitute a suitable known location comprising of such system information (see page 9 lines 25-36).

Claims 6,17,27,38, and 48 are rejected under 35 U.S.C. **103(a)** as being unpatentable over Bharati in view of Fitting and in further view of US Patent No. 6,915,302 of Christofferson et al. referred hereinafter "Christofferson".

In regard to claim 6,17,27,38, and 48, Bharati in view of Fitting discloses the claim limitations as discussed above.

However, Bharati in view of Fitting fails to explicitly disclose wherein the file name ranges from 1 to 256 characters.

Christofferson discloses files systems are known to support files name up to 256 characters, indicating wherein the file name ranges from 1 to 256 characters (see column 1 lines 45-46).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Bharati, Fitting, and Christofferson to have the file name ranges from 1 to 256 characters. A person of ordinary skill in the art would have been motivated to combine the teachings because Bharati in view of Fitting discloses files with a files name (see column 4 lines 4 lines 20-25 of Fitting) and Christofferson disclose it is known for files to range up to from 1 to 256 characters (see column 1 lines 45-46).

Response to Arguments

Applicant's arguments filed June 27, 2007 been fully considered but they are not persuasive.

In response to applicant argument, "The Office Action contends that Fitting discloses transmitting information formatted in the name of the file.[1] Fitting describes the use of a file name (the request file) which is formatted in a particular manner intended to point to data for a device. However, Fitting does not encode the information in the name itself. The information in Fitting's file name differs in at least two important respects. Rather, the name of Fitting's request file is encoded with the type of data needed ("<requested_data_type>") for a type of product sold

by the company ("<product_identifier>"). Hence, Fitting's file name does not encode the information itself, it encodes a pointer ("<requested_data_type>") that indicates where the correct type of information can be found in a shared file directory. Since the information is not encode in the file name of Fitting, the system described in Fitting must maintain a database. In some instances the Fitting system will be able to read the file name, but will not end up with the proper information if it is not in the database.[2] The claimed invention is not subject to this drawback of the Fitting system, since, as recited in the claims, 'the build of material information is encoded in a file name of the file marker.'" (see page 16 of Remarks) examiner respectfully disagrees.

Examiner notes above that Bharati discloses transmitting build of material information, but fails to explicitly disclose wherein the transmitted information is encoded in the file name of the file marker. Fitting discloses transmitting information formatted in the name of the file (as oppose to within the file). As the combination shows one of ordinary skill in the art could have been motivated to transmit encoded information in the file name, the limitation is met. Examiner in uncertain how applicant's argument that information encoded "is a pointer" and "must maintain a database" disputes the fact that Fitting discloses that information can be transmitted via the name of the file as oppose to within the file. Applicant's argument is moot. Examiner maintains his rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C. Puente whose telephone number is (571) 272-3652. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Emerson Puente

Emerson Puente
Examiner
AU 2113